

**Local 1242, International Longshoremen's Association, AFL-CIO; Local 1242-1, International Longshoremen's Association, AFL-CIO; Local 1291, International Longshoremen's Association, AFL-CIO; Local 1566, International Longshoremen's Association, AFL-CIO; Local 1332, International Longshoremen's Association, AFL-CIO; Local 1332-1, International Longshoremen's Association, AFL-CIO; Atlantic Coast District, International Longshoremen's Association, AFL-CIO and Dependable Distribution Services, Inc. and Teamsters Local 470.** Case 4-CD-878

January 20, 1995

## DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS BROWNING, COHEN, AND  
TRUESDALE

The charge in this Section 10(k) proceeding was filed on October 25, 1993, by Dependable Distribution Services, Inc. (Dependable or the Employer), alleging that the Respondents, Locals 1242, 1242-1, 1291, 1566, 1332, and 1332-1, International Longshoremen's Association, AFL-CIO (ILA), and Atlantic Coast District, International Longshoremen's Association, AFL-CIO (the District) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees they represent rather than to employees represented by Teamsters Local 470 (Teamsters). The hearing was held on December 9 and 23, 1993, and February 7, 1994, before Hearing Officer David Berger. Thereafter, Dependable and the Respondents filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

### I. JURISDICTION

Dependable Distribution Services, Inc., a Pennsylvania corporation, operates a facility at Pier 84, Philadelphia, Pennsylvania. Dependable annually receives revenues valued in excess of \$50,000 from customers located outside the State of Pennsylvania. We find that Dependable Distribution Services, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the ILA locals and Atlantic Coast District and Teamsters Local 470 are labor organizations within the meaning of Section 2(5) of the Act.

## II. THE DISPUTE

### A. Background and Facts of Dispute

The Employer has a collective-bargaining agreement with Teamsters Local 470 covering all of its warehouse employees. Since about September 10, 1993, the Employer has held a lease to operate Pier 84 in Philadelphia, Pennsylvania, and employees represented by Teamsters Local 470 have performed the work involved. For the 5 months prior to September 1993, the warehouse on that pier was vacant. According to the ILA, employees it represented had performed the warehousing work on pier before the Employer leased it.

In late September 1993, members of the ILA picketed Pier 84.

### B. Work in Dispute

The disputed work is the unloading and warehousing of cocoa beans at Dependable Distribution Services, Inc.'s Pier 84 facility in Philadelphia, Pennsylvania.

### C. Contentions of the Parties

The Employer asserts that there is reasonable cause to believe that the Respondents have violated Section 8(b)(4)(D) and that the dispute is properly before the Board for determination. The Employer further urges that, based on the relevant criteria, the work in dispute should be assigned to its employees represented by the Teamsters.

The ILA locals contend that there is no jurisdictional dispute and that the notice of hearing should be quashed. They further contend that there is no record evidence that they encouraged, authorized, condoned, or ratified the picketing at Pier 84 or threatened to do so. Alternatively, they argue that, if the Board finds that a jurisdictional dispute exists, the work should be awarded to employees represented by them. The District contends that the charge should be dismissed. It further asserts that, if the charge is not dismissed, the work in dispute should be assigned to employees represented by the ILA locals.

### D. Applicability of the Statute

On September 14, 1993, James Paylor, president of ILA Local 1566 and vice president of the District wrote to the Employer requesting an opportunity to meet to "explore the possibility" of assisting the Employer "with [its] work activity at Pier 84." About the same time, William Keller, a member of the Pennsylvania House of Representatives, telephoned and visited the Employer. Keller introduced himself as a member of the ILA for 24 years and asked to introduce the Employer to "people within the ILA . . . who would try to convince [the Employer] why they should have [Pier 84]." Keller then arranged a meeting

between the Employer and ILA Locals 1332 and 1332A Business Agent Thomas Blackwell. Blackwell told the Employer that Pier 84 was “longshoremen work” and that he “wanted his men on the pier” and that he “would like to put some men down there” (i.e., at the pier). ILA Local 1291 President Joseph Hill also encouraged the Employer in a telephone conversation to “sit down and see that the longshoremen should . . . be operating the [Pier 84] facility.”

On September 14 and October 23 and 25, 1993, mass picketing occurred at Pier 84. The picket signs read: “P.R.P.A. unfair to ILA.”<sup>1</sup> District Vice President and President of ILA Local 1566 William Paylor was observed on the picket line on October 23 conferring with a picket in a calm manner.<sup>2</sup> On one occasion, while the pickets were assembling, a picket displayed an ILA photograph identification card to the Employer and stated: “You guys better give us this work,” and “there’s going to be big problems.” One picket identified himself as an ILA member. Another, identified as ILA Local 1291 member Michael Billips, was observed wearing an ILA Local 1291 jacket on the picket line and placing one of the picket signs described above on a fence. When asked to identify themselves by a representative of the Employer, one of the pickets referred the representative to a representative of ILA Local 1242, McCann.

The ILA locals have at all times claimed the work in dispute. As described above, representatives of the District and Locals 1566, 1332 and 1332-A, as well as William Keller, who introduced himself as a 24-year member of ILA, repeatedly requested orally and in writing to meet with the Employer to arrange for the disputed work to be done by employees represented by the ILA. Beginning on the first day of these requests and continuing on October 23 and 25, mass picketing occurred at Pier 84. The pickets bore signs identifying the ILA, individuals on the picket line identified themselves as members of the ILA, and a representative of one of the locals was identified on the picket line as a spokesperson. Based on the foregoing, we find that there is reasonable cause to believe that the picketing was conducted by the District and the ILA locals. The picketing was in furtherance of ILA work-assignment objectives, and no ILA agent repudiated their actions. See *Coastal Cargo Co.*, 289 NLRB 542, 543 (1988).

There is no evidence presented of a voluntary method of resolving the jurisdictional dispute, that would be binding on all parties, and none is urged.

<sup>1</sup> P.R.P.A. is the Philadelphia Regional Port Authority.

<sup>2</sup> Although Paylor denied being present during the picketing, a conflict in testimony does not prevent the Board from proceeding under Sec. 10(k). The Board, in a 10(k) proceeding, does not determine whether a violation actually occurred, but only whether reasonable cause exists to believe that Sec. 8(b)(4)(D) has been violated. *Longshoremen ILA Local 1588 (Atlantic Cement)*, 273 NLRB 1723, 1725 (1985).

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

### E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge, 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

#### 1. Collective-bargaining agreements

The Employer and Teamsters Local 470 are parties to a collective-bargaining agreement effective by its terms from March 12, 1993, to March 13, 1996, which covers all of the Respondent’s warehouse employees. The Employer does not have a collective-bargaining relationship with the ILA locals. We find that this factor favors assigning the work in dispute, which includes warehousing, to employees represented by Teamsters Local 470.

#### 2. Employer preference and past practice

The Employer assigned the work in dispute to, and prefers that it be performed by, employees represented by Teamsters Local 470. There is no evidence that the Employer has in the past assigned the disputed work to employees represented by the ILA locals. We find that this factor favors awarding the work in dispute to employees represented by Teamsters Local 470.

#### 3. Area practice

Since September 1993, employees represented by Teamsters Local 470 have performed the unloading and warehousing of cocoa beans at Pier 84 of the Port of Philadelphia. Up to 6 months prior the Employer’s lease of the Pier 84 facility, ILA-represented employees performed warehousing for Chilean fruit at this pier. The practice elsewhere in the Port of Philadelphia is mixed. We find that this factor does not favor awarding the work in dispute to either group of employees.

#### 4. Relative skills

The evidence shows that employees represented by Teamsters Local 470 have performed the unloading and warehousing of cocoa beans at other locations and

that they have special training related to the handling of cocoa beans, such as fumigation and ventilation of storage facilities. Although there is evidence that ILA-represented employees have unloaded cocoa beans, there is no evidence that they have comparable training. Teamsters represented employees possess the requisite skills and training to perform the work in dispute. This factor favors awarding the work in dispute to employees represented by Teamsters Local 470.

#### 5. Economy and efficiency of operations

Under ILA collective-bargaining agreements with other employers, ILA Local 1291, which performs most of the labor involved in loading and unloading ships, usually uses three gangs with a minimum work crew of 16 and one foreman for unloading a vessel with palletized or sling cocoa beans. The employer must comply with minimum employee requirements for each classification of employees. Employees of one local cannot be used interchangeably with employees of other locals. The Employer's collective-bargaining agreement with Teamsters Local 470, in contrast, imposes no staffing requirements or restrictions. This factor favors awarding the work to employees represented by Teamsters Local 470.

#### 6. Certifications

Teamsters Local 470 has been certified by the Board as the collective-bargaining representative of the Employer's full-time warehousemen. The Respondents have not been certified as representatives of any of the Employer's employees. This factor favors awarding the work, which includes warehousing, to employees represented by Teamsters Local 470.

#### Conclusions

After considering all the relevant factors, we conclude that employees of Dependable Distribution Serv-

ices, Inc., represented by Teamsters Local 470, are entitled to perform the work in dispute. We reach this conclusion relying on the Employer's collective-bargaining agreement with Teamsters Local 470, the Employer's preference, relative skills, economy and efficiency of operations, and Teamsters Local 470's Board certification. In making this determination, we are awarding the work to employees represented by Teamsters Local 470, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

#### DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Dependable Distribution Services, Inc., represented by Teamsters Local 470, are entitled to perform the unloading and warehousing of cocoa beans at Dependable Distribution Services, Inc.'s Pier 84 facility in Philadelphia, Pennsylvania.

2. Locals 1242, 1242-1, 1291, 1566, 1332 and 1332-1, International Longshoremen's Association, AFL-CIO, and Atlantic Coast District International Longshoremen's Association, AFL-CIO, are not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Dependable Distribution Services, Inc., to assign the disputed work to employees they represent.

3. Within 10 days from this date, Locals 1242, 1242-1, 1291, 1566, 1332, and 1332-1 International Longshoremen's Association, AFL-CIO, shall notify the Regional Director for Region 4 in writing whether they will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.